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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 799

METROPOLITAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

MADDEN FURNITURE, INC. AND MARGUERITE MADDEN.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

PETER O. KNIGHT,
C. FRED THOMPSON,
JOHN BELL,
Counsel for petitioner.

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No. 799

METROPOLITAN LIFE INSURANCE COMPANY,
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PETITION FOR REVIEW ON WRIT OF CERTIORARI OF A DECISION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Metropolitan Life Insurance Company, a corporation, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit to review a decision and judgment of that Court.

Statement of the Matter Involved.

These companion cases originated in the District Court of the United States for the Southern District of Florida, where they were consolidated for trial and twice tried to juries, and they have been appealed to the Circuit Court of

Appeals three times, each appeal resulting in a reversal of the judgments below. The first decision of the appellate court is reported in 117 Fed. (2) 446, the second in 127 Fed. (2) 837, and the third, now sought to be reviewed, in 138 Fed. (2) 708.

In suits by beneficiaries upon life insurance policies, following death of the insured, the insurance company interposed defenses that the applications contained misrepresentations voiding the policies. One of these arose by the applicant's false answer "none" to Question 13 in each application, inquiring what physicians, if any, he had consulted or been treated by within the past five years. The defenses set forth wherein such answer was false (R. 10, 15). The first opinion of the Court of Appeals contains a complete statement of the issues and the evidence. At the trial, when all the evidence was in, the defendant moved for directed verdicts upon grounds that it had proven its defenses (R. 88). The motion being denied, verdicts and judgments were for the plaintiffs (R. 99, 108, 109).

On appeal, the Court of Appeals noted that the purpose of Question 13 was to reveal medical consultations and treatments of the applicant, so that the insurer might have the benefit of this information as a basis for further inquiries in determining his insurability, and that the answer sought to be elicited by the question was an answer of fact and not of opinion. The court found "that the evidence, as to both the materiality and the falsity of this answer, was conclusive", and held that, since "here, the answer was, and was known to be, untrue, its giving prevented recovery on the policy without regard to whether the answer was given with a conscious, fraudulent purpose to deceive." The court further held "that the evidence admits of no other conclusion than that, whether or not fraudulently intended, it was deliberately and knowingly made; and that because of this misrepresentation, the judgment may not stand."

The court said that its decision was in accord with settled law in Florida, as well as with its own repeated decisions. The judgments were reversed and the cases remanded for further and not inconsistent proceedings.

The District Court considered that this meant the reinstatement of previously overruled motions of the insurance company for judgments notwithstanding the verdicts, made under Rule of Civil Procedure 50(b), and that such motions should be granted forthwith (R. 100, 106, 149, 150). Judgments entered accordingly were reversed by the Court of Appeals, which held that its reversal of the original judgments for errors prior to verdict, "although one was the refusal to direct a verdict, with a remand for further consistent proceedings, meant a new trial with an avoidance of the same errors."

Upon retrial the district judge, holding that the evidence thereon was the same in substance as that offered on the first trial and that the opinion on the first appeal demanded verdicts and judgments for defendant, directed verdicts and entered judgments accordingly, from which plaintiff beneficiaries again appealed (R. 208, 210, 211, 212). The Court of Appeals agreed with the District Court "that the additional evidence was in substance and legal effect the same as that offered in the former trial, and that under the rule laid down on the first appeal, a verdict for defendant was demanded." It further held, however, that the Supreme Court of Florida, in the case of *Metropolitan Life Ins. Co.* v. *Poole*, 3 So. (2) 386, decided subsequent to its first decision, "has laid down a different rule from that announced by us, and that under that rule it was for the jury to say whether Madden's answer to question #13, though false, was made in good faith and, therefore, did not vitiate the policy." Saying it was bound to follow the Florida court, and that, under Florida law, plaintiffs were entitled to go to the jury on the issue of intentional or conscious

fraud, the judgments were reversed and the cases remanded for further and not inconsistent proceedings (R. 216-220). Appellee's petition for a rehearing was denied without opinion (R. 221-232, 233).

Jurisdictional Statement.

Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, United States Code, Title 28, Section 347(a).

The judgment of reversal sought to be reviewed was rendered November 10, 1943, and appellee's petition for a rehearing was denied January 3, 1944.

Question Presented.

The question presented is whether the Circuit Court of Appeals misconstrued the decision of the Florida Supreme Court in *Metropolitan Life Insurance Company* v. *Poole*. A copy of the opinion delivered on such decision is appended to this petition.

Reasons Relied On for the Allowance of the Writ.

This Court should grant a review on writ of certiorari because the Circuit Court of Appeals for the Fifth Circuit has decided an important question of local law in a way probably in conflict with applicable local decisions. In a recent case, *Wichita Royalty Co.* v. *City National Bank*, 306 U. S. 103, 83 L. Ed. 515, 59 S. Ct. 420, this Court reviewed, on certiorari, a decision of a circuit court of appeals on the ground that, in a case controlled by *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, that court misconstrued a state supreme court decision.

That the question involved is substantial is manifest upon its face, its general and prime importance to life insurance companies doing business in the State of Florida and to

persons insured by such companies and their beneficiaries, being readily apparent.

Petitioner therefore prays issuance by this Court of a writ of certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit so that the decision and judgment complained of may be reviewed thereon.

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